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# THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

## Report of the sessional working group on the administration of justice and the question of compensation

Chairman-Rapporteur: Mr. Louis Joinet

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## Introduction

1. In accordance with the decision taken by the Sub-Commission on 6 August 1996, a sessional working group of the Sub-Commission on the administration of justice and the question of compensation held its first meeting on 7 August 1996. The following experts were appointed as members of the working group on 7 August 1996: Mr. Stanislav Chernichenko (Eastern Europe), Mr. Alberto Diaz Uribe (Latin America), Mr. El-Hadji Guissé (Africa), Mr. Louis Joinet (Western European and other States) and Mr. Sang Yong Park (Asia).

2. The working group held three meetings, on 7, 9 and 13 August 1996.

3. A representative of the Centre for Human Rights opened the session of the working group on behalf of the High Commissioner for Human Rights and the Assistant Secretary-General for Human Rights.

4. The working group designated Mr. Louis Joinet as Chairman-Rapporteur for its 1996 session.

5. The following members of the Sub-Commission not members of the working group also took part in the general discussion: Mr. Miguel Alfonso Martínez (1st and 2nd meetings), Mr. Mohammad Sardar Ali Khan (1st meeting), Mr. Osman El-Hajjé (1st and 2nd meetings), Mr. Zhong Shukong (1st and 2nd meetings), Ms. Lucy Gwanmesia (1st and 2nd meetings), Mr. Yozo Yokota (1st and 2nd meetings), and Mr. David Weissbrodt (1st and 2nd meetings).

6. Following the adoption of the agenda, the working group decided to invite Mr. Theo van Boven, former Special Rapporteur of the Sub-Commission on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights, to participate in the discussion on the agenda item relating to basic principles and guidelines on the right to reparation.

7. Statements were made by representatives of the following non-governmental organizations in consultative status with the Economic and Social Council: Amnesty International (2nd meeting), International Commission of Jurists (2nd meeting) and International Association against Torture (2nd meeting).

8. The working group had before it the following documents relating to its provisional agenda (E/CN.4/Sub.2/1996/WG.1/L.1):

Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law prepared by Mr. Theo van Boven pursuant to Sub-Commission decision 1995/117 (E/CN.4/Sub.2/1996/17);

Note by the Secretariat on juvenile justice (E/CN.4/Sub.2/1996/WG.1/CRP.1);

Note by the Secretariat on follow-up measures to the Declaration on the Protection of All Persons from Enforced Disappearance (E/CN.4/Sub.2/1996/WG.1/CRP.2);

Note du Secrétariat sur le rapport de suivi de l'evolution de la peine de mort (E/CN.4/Sub.2/1996/WG.1/CRP.3, available only in French);

Ninth annual report and list of States which, since 1 January 1985, have proclaimed, extended or terminated a state of emergency, presented by Mr. Leandro Despouy, Special Rapporteur (E/CN.4/Sub.2/1996/19);

Report of the sessional working group on the administration of justice and the question of compensation on its 1995 session (E/CN.4/Sub.2/1995/16).

Adoption of the agenda

9. At its 1st meeting, the working group considered the provisional agenda. At the suggestion of the Chairman-Rapporteur, based on informal consultations with other members of the working group, the working group decided to adopt the following agenda:

1. Basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law.

2. Issues related to the deprivation of the right to life, with special reference to:

   (a) Imposition of the death penalty on persons of less than 18 years of age and on the mentally and physically disabled;

   (b) Summary, arbitrary and extrajudicial executions.

3. Follow-up measures to the Declaration on the Protection of All Persons from Enforced Disappearance.

4. Habeas corpus as a non-derogable right and as one of the requirements for the right to a fair trial.

5. Advisability of maintaining the agenda item on juvenile justice.

6. Measures to be taken to give full effect to the Convention on the Prevention and Punishment of the Crime of Genocide.

7. Provisional agenda for the next session.

8. Adoption of the report of the working group to the Sub-Commission.

## I. BASIC PRINCIPLES AND GUIDELINES ON THE RIGHT TO REPARATION FOR VICTIMS OF GROSS VIOLATIONS OF HUMAN RIGHTS AND HUMANITARIAN LAW

10. By its decision 1995/117, the Sub-Commission decided to request the working group to continue with priority, at the forty-eighth session, the consideration of the draft basic principles and guidelines proposed by the Special Rapporteur, Mr. Theo van Boven, with a view to making substantive progress in the matter.

11. In his opening statement, the representative of the Centre for Human Rights pointed out that the working group had last year made tangible progress in its examination of the draft principles and guidelines, which was reflected in its report. He expressed confidence that the group would do its best to complete the consideration of the draft during the present session.

12. Mr. Theo van Boven introduced the revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law prepared by him pursuant to Sub-Commission decision 1995/117. He stated that in the revised set of basic principles and guidelines many of the comments received from States and intergovernmental and non-governmental organizations, as well as the relevant comments and suggestions made by the members of the working group at its 1994 and 1995 sessions, had been taken into account.

13. In the preparation of the revised document he had the benefit of broad expertise assembled at a workshop organized by the International Commission of Jurists and the Maastricht Centre for Human Rights of the University of Limburg which met in Geneva from 20 to 22 February 1996. The text (E/CN.4/Sub.2/1996/17, annex) was the result of an in-depth consideration of the subject by the workshop in the light of the comments and reports referred to above. It should be noted that a new title was proposed to reflect the contents of the revised document: Basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law.

14. Mr. van Boven mentioned the major changes in the revised text. In the title, he proposed to use the word "reparation" in place of the words "restitution, compensation and rehabilitation". In his view, the concept of "reparation" was general in nature and included all the other terms; that generic term was used both in international and domestic law. At the end of the title he had added the words "and humanitarian law" in the light of the comments made by the International Committee of the Red Cross.

15. The Special Rapporteur pointed out that he had taken into consideration the remarks expressed at two previous sessions of the group concerning gross violations of human rights and had decided not to spell them out. He had combined some subparagraphs, reorganized and consolidated the text as a whole, and the draft now consisted of 15 principles instead of 20. However, the principle of gross violations was retained. The first part of the draft contained principles plus a limited number of provisions relating to what was originally listed under procedures and mechanism (arts. 1-11). The second part of the draft dealt with different forms of reparation which included restitution, compensation, rehabilitation and satisfaction (arts. 12-15).

16. Mr. van Boven stated that he had included two new elements in the text. One related to applicable norms and was formulated in article 3. Referring to the remarks expressed at the 1995 session of the working group on the right to remedy, he had decided to include that notion in article 4. He considered the notion of remedy as a recourse procedure available to any person claiming that his or her rights had been violated.

17. Mr. Chernichenko expressed the opinion that the principles and guidelines dealt not only with gross violations but with all violations of human rights. Consequently, the word "gross" should be deleted in the text. There was a discrepancy between violation of human rights and violation of humanitarian law. It would probably be advisable to delete the words "humanitarian law" and to point out that the principles were applicable in time of peace as well as during armed conflicts, with a view to guaranteeing the observance of the international human rights law and humanitarian law. It was also advisable to include in the draft a new principle recommending every State to make a list of gross violations of human rights which could be embodied in its legislation.

18. Mr. Zhong said that Mr. van Boven had improved his draft by taking into account many views expressed at the 1995 session of the working group. He suggested to replace in the first sentence of principle 2 the words "remedies and reparation" by "remedies or reparation". He also proposed to replace in the title the words "humanitarian law" by words "international law". He further suggested to insert in the subheading "Reparations may take any one ...", after the word "Reparations", the words "shall be provided in accordance with the law of the State concerned". This proposal was supported by Mr. Yokota. Mr. Guissé expressed his reservations concerning the reference to the law of the State concerned.

19. Mr. Yokota considered that the notion of gross violations of human rights should be included in principle 6. In his view, the second sentence of new principle 3 relating to applicable norms was not clearly formulated. With reference to principle 4, he asked who would bear responsibility for access to international procedures for the protection of human rights of persons. In his opinion, the term "universal jurisdiction" had a broad connotation and should be made more precise in the second part of principle 5. He also considered the term "statute of limitation" in principle 9 to be very controversial; it should be reworded by taking into account different "statutes of limitations" existing in the States concerned.

20. Mr. Yokota said he wished to delete the reference to "humanitarian law" and to replace it by "international law". Mr. Guissé, however, felt that the reference to humanitarian law must be retained to ensure protection in peacetime as well as in times of armed conflict. In his opinion, the references to both humanitarian and international law would make it possible to ensure full protection of victims.

21. Mr. Guissé suggested replacing the current title of draft principles 4 and 5 ("Right to a remedy"), by "Right to recourse", a more general and less limiting concept.

22. Replying to Mr. Yokota's comments, Mr. Guissé said he considered it essential to mention both individual and collective reparation in the context of the existence of two types of human rights, individual and collective, in the section of the draft principles entitled "Reparation". He explained that individual and collective reparation were complementary, rather than mutually exclusive, and that both must be included in the draft principles in order to ensure full reparation.

23. He thought that the application abroad of principle 8 might conflict with the regulations governing territorial jurisdiction. He recommended that principle 9 should not be limited to the concept of statutes of limitation but should be expanded to include pardons and amnesties in order to preserve the right of victims to bring a civil action.

24. Mr. Alfonso Martínez expressed disagreement with the title as he did not see why the document should be limited to gross violations alone: what was the limit between gross violations and those that were not? He also reiterated his concern that the document should refer to international humanitarian law and should not be limited to international human rights law. The duty of a State to respect human rights was based not only on the international obligations accepted by the State but, first and foremost, on its domestic regulations on human rights and fundamental freedoms. It was necessary to guarantee access to the relevant international procedures.

25. Ms. Gwamnesia stated that principles 2, 3 and 5 should not only afford civil remedies and reparation to victims but they should also deal with prosecution of persons who committed offences of an international nature. In her opinion, it was necessary to take into account in principle 2 the inquisitorial and accusatorial systems applicable in the world today. She proposed to delete the word "gross" in principle 5 because the term implied that a person would have to commit a similar crime several times before he could be brought to justice.

26. Mr. van Boven pointed out that the Sub-Commission, in its resolution 1989/13, had entrusted him "with the task of undertaking a study concerning the right to restitution, compensation and rehabilitation for victims of gross violation of human rights ...". The term "gross violations" was widely used by human rights organs and bodies. In principle, all violations of human rights should give rise to reparation. Therefore, he had no difficulty with deleting the word "gross". At the same time, he pointed out that the Commission on Human Rights and the Sub-Commission in particular often expressed their concern over the substantial damage and acute suffering caused to individuals, groups and communities as a result of "gross" violations of human rights and fundamental freedoms.

27. He agreed to replace the term "humanitarian law" by "international humanitarian law". As to the issue of the interrelationship between international and domestic law raised by Mr. Alfonso Martínez and Mr. Zhong, he agreed that he could make some accommodations in the text and delete, in particular, in principle 7 the words "In accordance with international law". He noted Mr. Zhong's statement that reparation should be provided in accordance with the law of the State concerned. However, while he was researching his study he discovered that only a few States had adequate provisions to that effect and the legislation of many States did not provide any redress in that field. As to the provision contained in the second sentence of principle 3, stating that "In the event international and national norms differ, the State shall ensure that the norm providing the higher degree of protection shall be applicable", he pointed out that the principle was

taken from article 5, paragraph 2, of the International Covenant on Civil and Political Rights. The principle was also included in American and European conventions on human rights. However, the wording of this provision could be improved to reflect more precisely the relevant provisions of the international instruments referred to.

28. With reference to the right of access to international procedures, Mr. van Boven stated that States had a duty not to prevent access to persons who were entitled under international instruments to utilized those procedures. The notion of and term "universal jurisdiction" contained in principle 5 related to crimes under international law, namely crimes of genocide, crimes against humanity and war crimes. Relevant instruments provided for universal jurisdiction. He supported the idea of collective rights embodied in principle 6. In that connection, Mr. van Boven referred to the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, in paragraphs 1 and 2 of which "victims" meant persons who, individually or collectively, had suffered damage.

29. Mr. van Boven acknowledged that the issue of statutes of limitations was a sensitive one. However, he had included it in principle 9, trying to word a compromise provision stating that statutes of limitations shall not apply in respect of periods during which no effective remedies existed for violations of human rights and humanitarian law. The second sentence of principle 9 also contained a more limited provision than in the original draft.

30. As to the objection by Mr. Alfonso Martínez to undue emphasis on the notion of international law, Mr. van Boven considered that in certain instances references to it should be retained where they were functional but in some places, like principle 7, the reference to international law could be deleted. As to the prosecution of offenders, he was in favour of prosecuting the perpetrators of very serious crimes. However, it was the duty of the State and the public authorities to prosecute offenders and not a right of the victim, as the Human Rights Committee had stated in its case law. In principle 15 (e) of the draft, by stating that "judicial or administrative sanctions against persons responsible for the violations" shall be provided, the matter was treated as a form of satisfaction.

31. Members of the working group pointed out that in 1994 and 1995 it had considered in detail the draft principles and guidelines, on the basis of which the revised set of draft principles and guidelines was submitted. In the opinion of the group, Mr. van Boven had taken into account many of the observations and remarks made by members of the group. The working group commended Mr. van Boven for the excellent work performed.

32. The working group and the Special Rapporteur expressed the hope that, in the light of the intention conveyed in Sub-Commission decision 1995/117 as well as in Commission on Human Rights resolution 1996/35, the Sub-Commission would be able to transmit the revised set of basic principles and guidelines, together with the comments and suggestions contained in the present report, to the Commission on Human Rights at its fifty-third session.

## II. ISSUES RELATED TO THE DEPRIVATION OF THE RIGHT TO LIFE, WITH SPECIAL REFERENCE TO: (a) IMPOSITION OF THE DEATH PENALTY ON PERSONS OF LESS THAN 18 YEARS OF AGE AND ON THE MENTALLY AND PHYSICALLY DISABLED; (b) SUMMARY, ARBITRARY AND EXTRAJUDICIAL EXECUTIONS

33. In response to a request by the working group at the forty-seventh session of the Sub-Commission, Mr. El-Hadji Guissé submitted a follow-up report on the evolution of capital punishment. He focused particularly on progress towards de jure and de facto abolition of the death penalty. He also emphasized that the systems of punishment of 97 States still included the death penalty 1/ and that it was imposed extrajudicially, particularly in the form of summary executions and enforced disappearances. The death penalty was imposed indiscriminately on vulnerable groups, including minors, pregnant women, mothers of young children, the mentally ill, the mentally disabled and older persons. Finally, he described steps taken to encourage the abolition of the death penalty both at the national level (national legislative and statutory guarantees of the right to a fair trial) and within the framework of the United Nations.

34. The Chairman-Rapporteur of the working group, speaking on behalf of his colleagues, congratulated Mr. Guissé and thanked him for his excellent report. Mr. Guissé agreed to submit a follow-up report on this important matter at the next session.

## III. FOLLOW-UP MEASURES TO THE DECLARATION ON THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE

35. Introducing agenda item 3, the representative of the Centre for Human Rights recalled that, at the forty-seventh session of the Sub-Commission, the working group had asked Mr. Louis Joinet to submit, at the forty-eighth session, a preliminary draft "international convention on the prevention and punishment of enforced disappearances". That draft (E/CN.4/Sub.2/1996/WG.1/CRP.2) was now before the group for its consideration.

36. In his introductory remarks, Mr. Joinet first recalled that, since 1975, the Sub-Commission had been concerned by the tragedy of enforced disappearances, a practice which had become widespread in Argentina after the military coup d'état of 1976. In view of the existence of such practices in many parts of the world, the Commission on Human Rights, alerted by the Sub-Commission, had finally decided to establish, within the framework of the special procedures, the Working Group on Enforced or Involuntary Disappearances (resolution 20 (XXXVI) of 29 February 1980), the mandate of which had been continuously extended since then.

37. In view of the persistence of such practices, the Sub-Commission had subsequently asked the sessional working group on the administration of justice to consider a draft declaration on the question. After being submitted to the Sub-Commission, the Commission on Human Rights and

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1/ As of January 1995, according to information provided by Amnesty International.

the Economic and Social Council, the draft had been adopted by the General Assembly in its resolution 47/133 of 18 December 1992, entitled "Declaration on the Protection of All Persons from Enforced Disappearance".

38. Mr. Joinet, Rapporteur, said that while the Declaration had been his primary inspiration in preparing the preliminary draft convention, he had also taken the following into consideration:

(a) The Inter-American Convention on Forced Disappearance of Persons, adopted by the Organization of American States (OAS) in June 1994;

(b) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 10 December 1984;

(c) The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, adopted by the General Assembly on 26 November 1968;

(d) The Code of Conduct for Law Enforcement Officials, adopted by the General Assembly on 17 December 1979.

39. After an article-by-article presentation of the text, he said that the working group had a choice of methods in considering the preliminary draft:

(a) Either the working group could proceed on an article-by-article basis;

(b) Or it could conduct a general debate which would allow the participants to give their preliminary views on the general approach of the preliminary draft and on matters of principle which should be studied in greater depth.

40. The working group decided on the second method and launched into a broad-ranging discussion. It focused primarily on the following points, which, for the sake of clarity, have been arranged under three headings: drafting questions, substantive issues and follow-up to consideration of the preliminary draft.

## A. Drafting questions

41. Several speakers said the preliminary draft seemed too detailed, which gave it a style which was not quite that of a convention (Mr. Zhong).

42. The opinion was expressed that the language needed to be tightened up by reorganizing some questions (Mr. Guissé) and, in some cases (for example, arts. 11 and 12), by splitting up articles that were too long (Mr. Zhong).

43. The working group endorsed those views.

44. It was also suggested that the title of the preliminary draft should be modified to make it clear that the convention in question was an "international" one and that the various articles should be grouped under

the following four headings: prevention, promotion, sanction and reparation (Mr. Park). The Rapporteur argued that, in order to facilitate adoption of the text by higher bodies, it would doubtless be better to keep the title and structure in their current form, which was based on that of the above-mentioned Declaration, adopted by the General Assembly in 1992.

45. It became clear during the discussion that there were some differences in translation between the Spanish and, in particular, the English versions and that of the original French (Ms. Gwanmesia). That point would be taken into consideration in the revised version.

B. Substantive issues

46. Comment focused essentially on matters of principle raised by the following articles:

Part One

Article 1 on the definition of forced disappearance: Several participants felt that, in view of the scale of this phenomenon in an ever-increasing number of countries, the definition, and also article 18, should include disappearances perpetrated by certain private entities or by organized groups acting altogether independently, without even an indirect link to the State (Mr. Zhong, Mr. Diaz Uribe). Other participants said that, while they understood the gravity of these situations, they had reservations in principle (Mr. Alfonso Martínez), particularly since such a course might weaken the State's mandate to ensure security of person. In that regard, it was noted that the State's obligation to compensate victims applied to all categories of victims, regardless of who was responsible for the violations (Mr. Diaz Uribe). In conclusion, the Rapporteur suggested that, in view of the differing opinions on that issue, the revised version of the text should include one or more alternatives so as to enable the group to take a fully informed decision.

Article 4, paragraph (1), subparagraph (d): Mr. Yokota suggested adding the names of United Nations specialized agencies and regional institutions to the subparagraph. Mr. Joinet suggested using, instead, the term "international cooperation".

Article 10, paragraph 2, which states that "no privileges, immunities or special exemptions shall be admitted in such trials": Mr. Yokota said he wondered whether that reference, which was taken from the Vienna Convention, was relevant. The Rapporteur promised to take that comment into account in the revised version by reproducing the wording of the Declaration, article 16, paragraph 3, of which specified that that restriction applied "without prejudice to the provisions contained in the Vienna Convention on Diplomatic Relations".

Article 17 on pardon: The Rapporteur suggested that the article should be reworded so that it could not be interpreted as excluding all possibility of pardon on humanitarian grounds until the detained person had been convicted, which implied that pardon was possible only after conviction. In principle, pardons were granted on humanitarian grounds only for medical

reasons, when the prisoner was in the terminal stage of a serious illness such as cancer or Acquired Immunodeficiency Syndrome (AIDS), a fact unrelated to his criminal status.

Article 18 on the appropriation of children of persons subjected to forced disappearance: It was asked whether this article should not be deleted since many other instruments dealt with the question (Mr. Park). The working group's attention was also drawn to the complexity of the issue (Mr. Zhong), particularly in view of the differences in the relevant national laws and in criteria for determining the best interests of the child, which varied from culture to culture (Ms. Gwanmesia, Mr. Guissé). The Rapporteur explained that, while the proposed wording was similar to that of article 18 of the Declaration, he would contact the Committee on the Rights of the Child in order to draw on its experience and to ensure that the article did not duplicate the provisions of other instruments.

Article 21 on officials who are authorized to order measures for the deprivation of liberty: It was pointed out that this article should take account of the specificity of the various national legal systems (Mr. Zhong). In general, reservations were expressed regarding any provision which explicitly stated that international law took precedence over national law (Mr. Alfonso Martínez). However, the Rapporteur later noted that it was in the nature of a convention to induce States parties to take account, in their laws, of the norms proposed by that convention but that, in order to take into account the specificities of national legal systems, Part Three of the draft would include the possibility of formulating reservations to certain articles at the time of accession. In that spirit, he had deleted from an earlier version the words, "States parties have the obligation under international law ...", keeping only the words commonly used in conventions: "The States parties to the present Convention undertake ...".

Article 24, paragraph 2, on the right of victims to reparation: It was suggested that rehabilitation should also be mentioned (Mr. Guissé). The Rapporteur explained that that had in fact been the reason for adding the reference to "the restoration of the honour and reputation" of the victim as part of the right to reparation.

Article 24, paragraph 4: It would be necessary to verify whether this article, devoted to the civil liability of States, presented a problem of coordination with the provisions of the Geneva Conventions, particularly Additional Protocol II, which dealt with the question (Mr. Guissé). The Rapporteur said he would contact the International Committee of the Red Cross (ICRC) in order to arrive at appropriate wording.

Part Two

47. There was a lengthy debate on the question of whether (Mr. Weissbrodt) the convention should be provided with a monitoring mechanism or whether this function should be vested in the Working Group on Enforced or Involuntary Disappearances (Mr. Alfonso Martínez and Mr. Chernichenko). The Rapporteur said that, in view of the importance of the question, he had preferred to ascertain the opinion of the working group before proposing a text. Consideration of the matter was postponed until the 1997 session.

Part Three

48. The working group did not have time to discuss this part. The only remark made was that the question of how many accessions should be required for the convention to enter into force should be left open (Mr. Alfonso Martínez and Mr. Zhong).

C. Follow-up to consideration of the preliminary draft

49. At the end of its session, the working group took the following decisions:

(a) In view of the technical nature of the text and the insufficient time available to the participants in the working group, the Rapporteur was asked to make any contacts which would facilitate study of the conditions under which the Centre for Human Rights could organize, an inter-sessional meeting of experts which would include the participation of members of the working group. The hope was expressed that Mr. Alfonso Martínez and Mr. Weissbrodt would take part in that meeting. If that proved impossible, the Rapporteur would contact Governments and non-governmental organizations (NGOs) with a view to examining possible ways of raising the funds needed to organize such a meeting. On that occasion, the group of experts would conduct a drafting review of the text on an article-by-article basis while attempting, to the extent possible, to avoid straying from the wording of the Declaration, inasmuch as it had already been approved by the General Assembly, except where new ideas were being introduced - particularly in order to take account of changes in the situation since the adoption of the Declaration in 1992;

(b) The Rapporteur would review the English and Spanish versions in order to bring them into line with the French original;

(c) The Rapporteur would endeavour to provide alternate texts for some articles in cases where differences of opinion emerged on matters of principle and, in general and time permitting, to prepare a report to be submitted along with the preliminary draft;

(d) The Secretariat would make available to the members of the working group at its next session, in the working languages, copies of the above-mentioned Declaration and the Inter-American Convention on Forced Disappearance of Persons.

IV. HABEAS CORPUS AS A NON-DEROGABLE RIGHT AND AS ONE OF THE REQUIREMENTS FOR THE RIGHT TO A FAIR TRIAL

50. In introducing the topic, the Chairman-Rapporteur recalled that the Sub-Commission had considered the question on several occasions since Ms. Nicole Questiaux, then Special Rapporteur on States of Emergency, had included it in her final study (E/CN.4/Sub.2/1982/15). The previous year, the working group had expressed the hope that Mr. Leandro Despouy, in updating his

annual report on human rights and states of emergency, would prepare a working document on that topic for the group. That document appeared in Part I of Mr. Despouy's annual report (E/CN.4/Sub.2/1996/19). The Chairman-Rapporteur said he was pleased by the quality of Mr. Despouy's work and suggested that, since the question had now been studied in sufficient depth, the working group might decide to make a concrete suggestion to the Sub-Commission in the form of a brief working document designed to take the form of a resolution or a decision when it was submitted to the Sub-Commission.

51. Ms. Gwanmesia said that, since habeas corpus was applied most frequently in Anglo-Saxon legal systems, it would be appropriate to ask Mr. Weissbrodt to prepare such a document. The working group endorsed that suggestion and Mr. Weissbrodt agreed to present the document next year.

52. Later, the Chairman-Rapporteur, with the support of Mr. Weissbrodt, pointed out that there were different forms of habeas corpus in other legal systems. Such was the case, for example, of the recurso de amparo, which existed in a very large number of Latin American countries and was broader in scope than habeas corpus. It was, therefore, deemed appropriate for Mr. Weissbrodt to consult Mr. Fix Zamudio, the Sub-Commission's Mexican expert and a specialist on the matter, with the latter's agreement.

## V. ADVISABILITY OF MAINTAINING THE AGENDA ITEM ON JUVENILE JUSTICE

53. Mr. Joinet pointed out that a large number of initiatives had already been taken by the Sub-Commission in the field of juvenile justice, and recalled the report on the application of international standards concerning the human rights of detained juveniles prepared by Mrs. M.C. Bautista. He also referred to the report of the expert group meeting on children and juveniles in detention: application of human rights standards (E/CN.4/1995/100), held in Vienna from 30 October to 4 November 1994. He further stressed that several United Nations bodies, including the Commission on Human Rights, the Sub-Commission and the Committee on the Rights of the Child, had expressed their serious concern about the situation of children deprived of their liberty. He drew attention to document E/CN.4/Sub.2/1996/CRP.1, prepared at his request by the secretariat, recapitulating the reports, studies and other documents submitted by United Nations bodies since Mrs. Bautista's final report. Mr. Joinet suggested that, in view of the importance of this work and the overly-full agenda of the working group, the item should be deleted or, in any case, given a lower priority than the item on improving the Convention on the Prevention and Punishment of the Crime of Genocide.

54. Mr. Guissé emphasized the importance of juvenile justice in particular because of the vulnerability of minors, and stated that the subject should not be ignored.

55. The working group decided to retain this item provisionally on the agenda for its 1997 session and requested Ms. Gwanmesia to prepare a working paper on the subject.

## VI. MEASURES TO BE TAKEN TO GIVE FULL EFFECT TO THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

56. The working group did not have time to consider this item. However, in the light of the conclusions and recommendations of the specific studies made by Mr. Nicomède Ruhashyankiko, entitled "Study on the question of the prevention and punishment of the crime of genocide" (E/CN.4/Sub.2/416) and of Mr. Benjamin Whitaker, entitled "Study on the question of the prevention and punishment of the crime of genocide" (E/CN.4/Sub.2/1985/6), it decided to include it in its agenda for the 1997 session in order to prepare, for consideration by the Sub-Commission, concrete proposals for the effective implementation of the Convention on the Prevention and Punishment of the Crime of Genocide.

## VII. PROVISIONAL AGENDA FOR THE NEXT SESSION

57. At its 2nd meeting, the Working Group adopted the following provisional agenda for its next session:

1. Election of officers.

2. Adoption of the agenda.

3. Follow-up measures to the Declaration on the Protection of All Persons from Enforced Disappearance.

4. Issues related to the deprivation of the right to life, with special reference to:

   (a) Imposition of the death penalty on persons of less than 18 years of age and on the mentally and physically disabled;

   (b) Summary, arbitrary and extrajudicial executions.

5. Habeas corpus as a non-derogable right [and as one of the requirements for the right to a fair trial]

6. Measures to be taken to give full effect to the Convention on the Prevention and Punishment of the Crime of Genocide.

7. Juvenile justice.

8. Provisional agenda for the next session.

9. Adoption of the report of the working group to the Sub-Commission.

## VIII. ADOPTION OF THE REPORT OF THE WORKING GROUP TO THE SUB-COMMISSION

58. At its 3rd meeting, on 13 August 1996, the working group unanimously adopted the present report to the Sub-Commission.

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